

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROGER ("IAN") CUNNINGAM,

Plaintiff,

GREAT BASIN INSTITUTE AMERICORPS PROGRAM,

Defendant.

Case No. 3:14-cv-00242-MMD-WGC

ORDER

**(Pl.'s Motion to Compel Arbitration
– dkt. no. 1)**

I. SUMMARY

Before the Court is Plaintiff Roger (“Ian”) Cunningham’s Motion to Compel Arbitration (“Motion”) (dkt. no. 1). The Court has reviewed Defendant Great Basin Institute’s opposition (dkt. no. 2), and Plaintiff’s reply (dkt. no. 6). The Court ordered both parties to submit supplemental briefs to address the Court’s subject matter jurisdiction over this action. (Dkt. no. 7.) After considering the supplemental briefs (dkt. nos. 8, 9), the Court finds that it lacks subject matter jurisdiction. The Motion is therefore denied.

II. BACKGROUND

Plaintiff, an Illinois resident, seeks to compel Defendant, his former employer, to arbitrate a dispute over his termination from Defendant's AmeriCorps Program (the "Program"). Defendant is a Nevada non-profit corporation that partners with governmental agencies to staff its projects, which include environmental "restoration and monitoring initiatives throughout Nevada." (Dkt. no. 9 at 3.) Beginning in May 2012, Plaintiff served as an Invasive Plant Survey Mapping and Treatment Technician for the

1 Program in Nevada. (Dkt. no. 1 at 2.) Plaintiff was terminated from the Program for
 2 alleged misconduct in July 2012. (*Id.*)

3 Plaintiff's participation in the Program was governed by Defendant's AmeriCorps
 4 Member Service Contract ("Service Contract"). Among other provisions, the Service
 5 Contract outlines a grievance procedure that "provide[s] a formal, standardized means
 6 for AmeriCorps members to seek redress concerning actions of staff of the service site
 7 and/or employees of the Great Basin Institute." (*Id.* at 16.) The grievance procedure
 8 includes processes for informal and formal resolution of AmeriCorps members'
 9 grievances. If informal resolution is unsuccessful, the Service Contract allows a member
 10 to seek formal resolution through optional Alternative Dispute Resolution ("ADR"), a
 11 grievance hearing, and binding arbitration. (*Id.* at 16-17.)

12 In July 2012, Plaintiff filed a grievance with Defendant regarding his termination
 13 from the Program. (*Id.* at 2.) The parties participated in ADR and a grievance hearing
 14 between August 2012 and April 2013. (*Id.*) After receiving an adverse decision from the
 15 grievance hearing in April 2013, Plaintiff sought binding arbitration. The parties dispute
 16 whether Plaintiff's request for arbitration complies with the Service Contract's formal
 17 resolution process and with the procedure to compel arbitration described in the Federal
 18 Arbitration Act ("FAA"), 9 U.S.C. § 4.

19 **III. LEGAL STANDARD**

20 The FAA provides that a party may petition for an order to compel arbitration
 21 pursuant to a written arbitration agreement in "any United States district court which,
 22 save for such agreement, would have jurisdiction under Title 28[] in a civil action . . . of
 23 the subject matter of a suit arising out of the controversy between the parties." 9 U.S.C.
 24 § 4. The FAA "bestow[s] no federal jurisdiction but rather requir[es] an independent
 25 jurisdictional basis." *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581-82 (2008).

26 Federal courts are courts of limited jurisdiction, having subject matter jurisdiction
 27 only over matters authorized by the Constitution and Congress. U.S. Const. art. III, § 2,
 28 cl. 1; e.g., *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The

1 “presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded
2 complaint rule,’ which provides that federal jurisdiction exists only when a federal
3 question is presented on the face of the plaintiff’s properly pleaded complaint.”
4 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). In the arbitration context, federal
5 courts “may ‘look through’ a [petition to compel arbitration under the FAA] to determine
6 whether it is predicated on an action that ‘arises under’ federal law.” *Vaden v. Discover
7 Bank*, 556 U.S. 49, 62 (2009).

8 Additionally, diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) — where
9 opposing parties have complete diversity of citizenship and the amount in controversy
10 exceeds \$75,000 — constitutes an independent basis for federal jurisdiction of a petition
11 to compel arbitration. To determine whether an action meets the requisite amount in
12 controversy, courts apply a “legal certainty standard . . . when a party files a petition in
13 federal court to compel arbitration.” *Geographic Expeditions, Inc. v. Estate of Lhotka ex
rel. Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010). Under the legal certainty standard, “a
15 federal court has subject matter jurisdiction unless upon the face of the complaint, it is
16 obvious that the suit cannot involve the necessary amount.” *Id.* at 1106 (citation and
17 internal quotation marks omitted).

18 **IV. DISCUSSION**

19 The Court finds that no independent basis for federal jurisdiction exists. First, the
20 underlying controversy does not appear to arise from federal law. In his supplemental
21 brief, Plaintiff notes that his involvement in the Program does not render him a federal
22 employee or necessarily subject him to federal employment laws. (Dkt. no. 8 at 2); see
23 42 U.S.C. § 12655n(b)(1) (“[A] participant . . . in a program that receives assistance
24 under this division shall not be considered a Federal employee and shall not be subject
25 to the provisions of law relating to Federal employment.”). Plaintiff also points out that
26 certain federal employment laws may cover AmeriCorps participants, including
27 compensation for work injuries, 42 U.S.C. § 12655n(b)(2), and the Family and Medical
28 Leave Act, 42 U.S.C. § 12631. But Plaintiff does not claim that his dispute with

1 Defendant involves these or any other federal laws, and the controversy suggested in
2 Plaintiff's Motion does not appear to involve these laws; rather, Plaintiff seems to argue
3 that Defendants violated the Service Contract by failing to follow its discipline procedure
4 prior to his termination. (See dkt. no. 1 at 23-24.) Because the underlying controversy
5 thus appears to involve a breach of contract issue, it is not clear that the Motion is based
6 on an action that arises under federal law.

7 Plaintiff instead asserts that the Service Contract gives rise to federal jurisdiction
8 because it states that “[a] lawsuit to enforce arbitration awards may be brought in any
9 Federal District Court having jurisdiction over the parties without regard to the amount in
10 controversy or citizenship.” (*Id.* at 17.) The Court disagrees. First, Plaintiff overlooks the
11 rule that a party may not use a contract to waive the absence of subject matter
12 jurisdiction. See *Stock W., Inc. v. Confederated Tribes of Colville Reservation*, 873 F.2d
13 1221, 1228 (9th Cir. 1989). Second, this clause applies to actions to enforce arbitration
14 awards, not actions to compel arbitration. Because the underlying dispute involves
15 Plaintiff's termination — as opposed to the enforcement of an arbitration award — the
16 Court is not persuaded that this clause acts as an independent basis for federal subject
17 matter jurisdiction over this action.

18 Finally, although both parties assert that complete diversity exists, the amount in
19 controversy does not appear to exceed \$75,000. (See dkt. no. 8 at 2-3; dkt. no. 9 at 3.)
20 Plaintiff's grievance suggests that the damages at issue include lost earnings, which,
21 according to the Service Contract, would total \$11,320.40 at most. (See dkt. no. 1 at 8.)
22 Although the grievance also mentions lost educational credit hours, effects on future
23 employability, and psychological distress (see *id.* at 24), neither Plaintiff's Motion nor his
24 supplemental brief claims that the amount in controversy exceeds \$75,000. Indeed,
25 Plaintiff's supplemental brief seems to acknowledge that the amount in controversy is
26 below the jurisdictional threshold — Plaintiff argues that Defendant “has specifically
27 waived [the \$75,000] requirement” through the clause in the Service Contract discussed
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1 above. (See dkt. no. 8 at 3.) It is obvious that the amount in controversy is not satisfied
2 here. The Court therefore finds that it lacks subject matter jurisdiction.

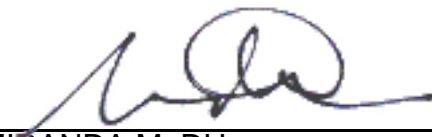
3 **V. CONCLUSION**

4 The Court notes that the parties made several arguments and cited to several
5 cases not discussed above. The Court has reviewed these arguments and cases and
6 determines that they do not warrant discussion as they do not affect the outcome of the
7 Motions.

8 It is ordered that Plaintiff's Motion to Compel Arbitration (dkt. no. 1) is denied.

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10 DATED THIS 2nd day of January 2015.
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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE